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No. 79-1926

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

UNION CAMP CORPORATION,
Petitioner,

v.

SEABOARD COAST LINE RAILROAD COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT
SEABOARD COAST LINE RAILROAD COMPANY
IN OPPOSITION

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The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 613 F.2d 604, and is reproduced as Petitioner's "Appendix A." The Judgment of the Court of Appeals of March 14, 1980 is reproduced as Petitioner's "Appendix B." The Denial of Rehearing *En Banc* of May 1, 1980 is unpublished, but notice of the denial is reproduced as Petitioner's "Appendix C."

The Findings of Fact and Conclusions of Law of the District Court, dated May 24, 1979 is unpublished, but that opinion is quoted at length in the Fifth Circuit's opinion. The District Court's Permanent Injunction is unpublished, but is reproduced as Petitioner's "Appendix D."

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Whether this Court should exercise its powers of discretionary review to reconsider an injunction barring the Petitioner from relitigating issues taken to a final judgment in a previous case.

Whether the *Erie* doctrine allows relitigation in State Court of issues taken to final judgment in a federal district court, despite the principles of *res judicata* and collateral estoppel.

Whether after repeated attempts by Petitioner to relitigate contract construction issues decided adversely to it by a federal court, an injunction by a federal court barring such attempts is inequitable.

STATEMENT OF THE CASE

Respondent Seaboard Coast Line Railroad Company (hereinafter "SCL" or "the railroad") petitioned for and obtained a permanent injunction in the District Court against Union Camp restraining it from relitigating issues adjudicated in *Brown v. Seaboard Coast Line Railroad Co.*, 554 F.2d 1299 (5th Cir. 1977); *rehearing*

denied, 559 F.2d 29 (5th Cir. 1977), *cert. denied*, 434 U.S. 975, 98 S. Ct. 533, 54 L. Ed. 2d 467 (1977) (hereinafter referred to as "*Brown*"). That injunction was affirmed by the Fifth Circuit Court of Appeals, 613 F.2d 604 (5th Cir. 1980), and rehearing *en banc* was denied. Appendix to Petition for Certiorari. Petitioner Union Camp Corporation (hereinafter "Union Camp") has petitioned for certiorari, asking this Court to review the equities of the injunction affirmed by the Fifth Circuit.

Brown involved the construction of an agreement providing indemnity for the "joint switching railroads" (including SCL) if the acts, defaults or negligence of Union Camp "caused . . . or contributed to" a casualty, occurring at Union Camp's plant at Savannah, Georgia. The District Court in *Brown* held Union Camp liable to fully indemnify SCL upon a jury finding of negligence attributable to Union Camp. Affirming, the Fifth Circuit held:

> The jury determined that Union Camp had indeed "contributed to" the loss . . . . This determination in effect triggered Union Camp's obligation to indemnify the railroad for the entire loss.

Brown, supra, at 554 F.2d 1303. This construction of the contract became a final judgment upon this Court's denial of certiorari.

Despite the clear and binding adjudication in *Brown* that in cases of joint negligence Union Camp was bound under its contract to indemnify SCL, Union Camp has refused to pay respect to the *Brown* decision. Instead, it has re-raised the same defenses it lost on in *Brown* in every case which has come up involving the indemnity contract (at the date of this writing, four cases). SCL

sought and obtained the present injunction to avoid the burden of relitigating the precise issue already decided, with all the attendant problems, risks and expenses of litigation; and the risk that some other court will fail to pay due deference to the *res judicata*/collateral estoppel effect of *Brown*.

It should be observed that Union Camp well understood that *Brown* involved binding construction of its contractual obligations. The case involved less than $7,000.00, yet Union Camp, well appreciating the significance of the issue, appealed to the Fifth Circuit, moved for rehearing *en banc* and petitioned for certiorari. Union Camp lost—but they refuse to accept the fact.

It is submitted that the injunction is unquestionably proper, and that this case does not warrant the exercise of this Court's power of discretionary review. It is therefore respectfully requested that the Petition for Certiorari be denied.

REASONS FOR DENIAL OF WRIT

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS JUSTIFYING THE EXERCISE OF THIS COURT'S POWER OF DISCRETIONARY REVIEW.

Union Camp's argument does not raise questions of important public policy or federal law. The case is primarily of interest only to the litigants. At the heart of the dispute is a conflict over the construction of an indemnity contract between the parties. The construction in dispute concerns very specific contract language, in a very narrow and well-defined factual

situation. Simply put, this case is not one of such broad importance that the Supreme Court should review it.

No question is raised regarding the federal court's power to issue an injunction to prevent burdensome relitigation of issues previously taken to final judgment. This Court has expressly recognized that the "relitigation exception" to the anti-injunction statute, 28 U.S.C. 2283, permits a federal court to enjoin relitigation in state courts of issues already decided in federal litigation. *Mitchum v. Foster,* 407 U.S. 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972) at 407 U.S. 235, 236. *See also Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970) at 398 U.S. 294, 295.

Union Camp has not pointed to any dispute between the Circuits regarding the powers of a federal court to enjoin relitigation of issues decided in federal court. Indeed, the circuits considering the issue appear to be in harmony. *See* for example, *Southwest Air Lines Company v. Texas International Airlines,* 546 F.2d 84 (5th Cir. 1977); *International Association of Machinists v. Nix,* 512 F.2d 125 (5th Cir. 1975); *Lamb Enterprises, Inc. v. Kirkoff,* 549 F.2d 1052 (6th Cir. 1977), *cert. denied,* 431 U.S. 968, 97 S. Ct. 2927, 53 L. Ed. 2d 1064 (1977); *United States v. Ford Motor Company,* 522 F.2d 962 (6th Cir. 1975); *Samuel T. Ennis & Co. v. Woodman Realty Co.,* 542 F.2d 45 (7th Cir. 1976); *Necchi Sewing Machine Sales Corp. v. Carl,* 260 F. Supp. 665 (S.D.N.Y. 1966).

Union Camp was cognizant of the *res judicata* effect that *Brown* would have on the contract in question before that case was final. Indeed, one of its points made in its petition for certiorari to this Court in the

Brown case was the potential long term binding effects the Fifth Circuit's judgment would have.

> Insofar as the instant parties are concerned, the indemnity agreement may be expected to run well into the 21st Century. A faulty precedent on its interpretation could impose long term and onerous financial burdens on the petitioner (the indemnitor) . . . .

Union Camp's Petition for Writ of Certiorari, page 6, in *Union Camp v. Seaboard Coast Line Railroad Company, Ray D. Brown, and Nancy Jane Brown*, Supreme Court of United States, Case No. 77-531.

Union Camp argues that *Brown* is inconsistent with a subsequent State Court decision, *Union Camp Corporation v. Seaboard Coast Line Railroad Co.*, 145 Ga. App. 417, 243 S.E.2d 631 (1978) (referred to herein as the "SCL" case as in the Fifth Circuit Opinion and in Union Camp's Petition). The *SCL* case did indeed involve the same contract as in issue in *Brown*, but the *SCL* case involved a critically different fact situation: no negligence chargeable to Union Camp. As the Fifth Circuit observed in *Brown*, negligence to any degree chargeable to Union Camp was the "trigger" for the indemnity. The *Brown* decision and the *SCL* decision are not inconsistent, as observed by both the District Court and the Fifth Circuit.

Union Camp is obviously unhappy with the result in *Brown*, but has unquestionably had adequate opportunity to fully litigate the issues there decided. Its arguments have been addressed to the Fifth Circuit no less than four times (in the appeal and petition for rehearing in *Brown*, and in the appeal and petition for rehearing in the present case), and to this Court once before, in

the petition for certiorari in *Brown* (which was denied). Union Camp is entitled to its day in Court, but having had it, it should then abide by the Court's judgment. Its repeated refusal to do so necessitated the injunction in the present case.

It is suggested that the framing of an injunction is not an appropriate matter for this Court's exercise of discretionary review. The framing of an injunction appropriate to the facts is a matter particularly addressed to the discretion of the District Court Judge, sitting as chancellor. *See J. M. Fields of Anderson, Inc. v. Kroger Company,* 330 F.2d 686 (5th Cir. 1964). Whether the Judge abused his discretion in issuing the injunction in the present case was argued at length in the Fifth Circuit, and that Court ultimately ruled the injunction was proper and affirmed it. Union Camp has showed no justification why this Court should spend its time and resources, and the time and resources of SCL, so that it may once again make the arguments which no Judge has found persuasive.

Finally, the most compelling reason for this Court to refuse to exercise its discretionary review is that the Fifth Circuit's affirmance of the injunction is, in a word, correct. As is discussed more fully below, the injunction, based on *res judicata*/collateral estoppel grounds, is not contradictory to the *Erie* doctrine. Union Camp is barred, and equitably so, from forcing SCL through expensive, time consuming, and unnecessary relitigation of the same contract terms, time after time, again with the risk of someday coming before a Judge who will not pay heed to the principles of *res judicata.* The injunction is by its express terms limited to the issues litigated and decided between SCL and Union Camp in *Brown.* The

injunction was properly affirmed by the Fifth Circuit Court of Appeals, after full consideration, and it is suggested that this Court should not now disturb it.

II.

THE INJUNCTION AFFIRMED BY THE FIFTH CIRCUIT IN NO WAY CONFLICTS WITH *ERIE*.

In asserting that the injunction below violates this Court's mandate in *Erie Railway Company v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1930), Union Camp misinterprets the meaning of that landmark case, and blurs the clear distinction between the separate doctrines of *res judicata* and *stare decisis*. The basis for the injunction is the well established "relitigation" exception to the anti-injunction statute, 28 U.S.C. § 2283, specifically that a Federal Court may enjoin state court litigation of issues previously taken to a final judgment in Federal Court. *Erie*, on the other hand, did not involve the law of judgments at all, but simply held that the decisions of state appellate courts are part of the "state law" a Federal Court is bound to follow in a diversity case. *Erie* did not affect in any way the principle that a final judgment, whether the court be federal or state, is binding on the parties to the action. *Erie* is simply a rule of *stare decisis*.

The doctrine of *res judicata*/collateral estoppel, which formed the basis for the injunction, is not grounded on the principle of correctness but on the idea that there must be an end to litigation. In *Montana v. United States*, 440 U.S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979) at 440 U.S. 153, this Court held:

> A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question

> or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . ." [Citations omitted.] Under res judicata, a final judgment on the merits bars further claims by the parties or their privies based on the same cause of action. [Citations omitted.] Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. [Citations omitted.] Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction. [Citations omitted.] To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by managing the possibility of inconsistent decision.

The foregoing passage was relied upon by both the District Court and the Fifth Circuit regarding the present injunction. It is suggested to the Court that the passage is a basis for denial of the present petition. The principles of finality set out in *Montana* simply are not affected by the rule of *Erie*.

Union Camp confuses the doctrines of *res judicata* and *stare decisis* in its petition to this Court. At pages 7 and 8 it contends that *Erie* does not permit an interpretation by a Federal Court sitting in a diversity case to take precedence over a state court interpretation of the same legal question. As an abstract principle of

law, the foregoing is correct, but the injunction does not perpetuate the *Brown* case as precedential effect, but is strictly limited to effectuating that judgment on *res judicata*/collateral estoppel grounds. Despite Union Camp's contentions to the contrary, the injunction does not shackle Union Camp to a Federal Court interpretation of "state law." What it does is bind Union Camp to follow and abide by the final judgment of the District Court.

The justification for the injunction is reflected by Union Camp's petition. The basis of Union Camp's contention is simple dissatisfaction with the Fifth Circuit's determination of state law in the *Brown* case. An example of Union Camp's continued attempts to relitigate *Brown* is seen in its language at page 7. Union Camp states:

> It [Union Camp] seeks only the unfettered right to have applicable state law apply to its contract in future cases as and when they arise.

In other words, it seeks the right to continue to litigate the very issues which were taken to a final judgment in *Brown*. This conduct necessitated the injunction. Union Camp's argument that it should have the unfettered right to relitigate *Brown* in State Court is a request for a ruling from this Court that *res judicata*/collateral estoppel is no longer viable in Federal Court diversity cases. It would have this Court establish that a final judgment from a District Court in a diversity case is final only until such time as a State Court should give consideration to the same issue. Union Camp seems to think that federal judgments are one way tickets good for this trip, and today only.

III.

THE INJUNCTION IS EQUITABLE AND IS NO BROADER THAN REQUIRED TO PREVENT BURDENSOME RELITIGATION OF THE ISSUES DECIDED IN *BROWN*.

The injunction was necessitated by Union Camp's inequitable conduct, specifically its persistence in ignoring *Brown* and seeking to force burdensome relitigation of the issues decided in *Brown* on SCL. The record shows a number of examples of Union Camp's obstinance.

First are *Miller v. Seaboard Coast Line Railroad Co. and Union Camp Corp.*, State Court of Chatham County, Georgia, Civil Action No. 76-1636, and *Colonial Fast Freight Lines, Inc. v. Seaboard Coast Line Railroad Co., and Union Camp Corp.*, State Court of Chatham County, Georgia, Civil Action No. 74-1245. These cases are the property damage claims arising from the same accident giving rise to the *Brown* personal injury litigation. The indemnity issues are absolutely identical, but Union Camp refuses to recognize the *res judicata* effect of *Brown* on the indemnity agreement. Instead, it has filed defenses on the indemnity claims in *Miller* and *Colonial* which are virtual verbatim copies of the arguments made by and decided against Union Camp in the Fifth Circuit in *Brown*.

Two other examples of Union Camp's obstinant refusal to recognize the ruling in *Brown* are *Daniel Razook v. Central of Georgia Railroad Co.*,* Superior Court of Chatham County, Georgia, Civil Action No. 122-33, and *Seaboard Coast Line Railroad Co. v. Union*

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*Central of Georgia is party to the contract in question, and is one of the "joint switching railroads" along with SCL.

Camp Corp., Superior Court of Chatham County, Georgia, Civil Action No. 11705-0. Rather than limit its defense to the indemnity claims to the area left unresolved by *Brown* (the question of indemnity when there is no negligence chargeable to Union Camp) Union Camp has continued with a broad denial of indemnity, just as if *Brown* had never been decided.

The carefully worded injunction explicitly limits its operation to the issues, the parties, and the contract provisions litigated in *Brown*. Read in context, the injunctive language is no broader than necessary to prevent relitigation of the issues *Brown* resolved. Specifically, that if Union Camp "caused . . . or contributed to . . ." a casualty that full indemnity attached, that the indemnity includes expenses and attorney's fees, and that no judgment in favor of a claimant is necessary for the indemnity to operate.

Union Camp's assertion that it is barred by the injunction from contravening the District Court's interpretation of the contract even on a different indemnity agreement with a different party ignores the plain language of the injunction. Paragraph One provides that Union Camp is barred from contesting the Court's construction of "the contract between Seaboard Coast Line and Union Camp Corporation of May 1, 1967 . . . ." Simply put, if a dispute arises on a different indemnity contract with a different party, the construction of the "contract between Seaboard Coast Line and Union Camp Corporation of May 1, 1967 . . ." is not in issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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